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SIMTEK CORP
Form S-8
April 10, 2007

As filed with the Securities and Exchange Commission on April 10, 2007

Registration No. 333-_____

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

SIMTEK CORPORATION
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State of Incorporation)

84-1057605
(I.R.S. Employer Identification No.)

4250 Buckingham Dr. #100
Colorado Springs, Colorado 80907
(Address of Principal Executive Offices)

Simtek Corporation 1994 Non-Qualified Stock Option Plan
(Full Title of the Plan)

Harold Blomquist
Chief Executive Officer and President
Simtek Corporation
4250 Buckingham Dr. #100
Colorado Springs, CO 80907
(719) 531-9444

(Name, address and telephone number, including area code, of agent for service)

Copies to:
Hendrik F. Jordaan, Esq.
Garth B. Jensen, Esq.
Holme Roberts & Owen LLP
1700 Lincoln, Suite 4100
Denver, Colorado 80203
(303) 861-7000

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered (1) | Proposed Maximum Offering Price Per Share (3) | Proposed Maximum Aggregate Offering Price |
|---|--------------------------------|---|---|
| Common Stock, \$0.0001 par value (2) | | | |
| Issuable pursuant to | 756,460 | \$4.201(3) | \$3,177,888 |

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options previously
granted under the Simtek
Corporation 1994
Non-Qualified Stock
Option Plan

| | | | |
|---|---------|-------------|-------------|
| To be issued pursuant to the Simtek Corporation 1994 Non-Qualified Stock Option Plan | 53,540 | \$5.695 (4) | \$ 304,910 |
| | ----- | | ----- |
| Total | 810,000 | | \$3,482,799 |
| | ===== | | ===== |

- (1) This Registration Statement shall also cover any additional shares of Common Stock which become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of Common Stock.
- (2) Increase in authorized number of shares under the Simtek Corporation 1994 Non-Qualified Stock Option Plan pursuant to the Ninth, Tenth and Eleventh Amendments to such Plan.
- (3) Computed in accordance with Rule 457(h) under the Securities Act of 1933 solely for purposes of calculating the registration fee based on the exercise price of the outstanding options under the Simtek Corporation 1994 Non-Qualified Stock Option Plan.
- (4) Computed in accordance with Rules 457(c) and 457(h) under the Securities Act of 1933 solely for purposes of calculating the registration fee based upon the average of the high and low prices of the Registrant's Common Stock on April 5, 2007, as reported on The Nasdaq Capital Market.

Form S-8 Pursuant to General Instruction E

This Form S-8 is filed with the Securities and Exchange Commission (the "Commission") pursuant to General Instruction E to Form S-8. The contents of the earlier Registration Statements on Form S-8, Registration Nos. 33-98294, 333-76481, 333-73794 and 333-121005 are hereby incorporated by reference into this Form S-8. All capitalized terms not defined herein shall have the same meaning as set forth in the Form S-8.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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Item 6. Indemnification of Directors and Officers.

Under our Certificate of Incorporation and Bylaws, we are required to indemnify former and current directors and officers, and may indemnify employees and agents, but only if such person seeking indemnification has satisfied the statutory standard of conduct. To satisfy the statutory standard of conduct, a person must have acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation. In addition, in any criminal action or proceeding, the person must also have had no reasonable cause to believe the person's conduct was unlawful. Regardless of standards of conduct, indemnification of expenses for directors and officers is mandatory under Section 145 of the Delaware General Corporation Law ("DGCL") to the extent they are successful on the merits in defending a proceeding. Under Section 145 of the DGCL, in derivative suits (i.e., suits by or in the right of the corporation), indemnification is only available for expenses and attorneys' fees incurred in defending or settling a suit and only in circumstances where there has been no adjudication of monetary liability to the corporation.

As permitted by Section 102(b)(7) of the DGCL, our Certificate of Incorporation provides that, to the fullest extent permitted by the DGCL, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability for (i) any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) willful or negligent conduct in paying dividends or repurchasing or redeeming stock out of funds that are not lawfully available, in violation of Section 174 of the DGCL, or (iv) any transaction from which the director derives an improper personal benefit.

We maintain insurance policies under which our directors and officers are insured, within the limits and subject to the limitations of the policies, against expenses in connection with the defense of actions, suits or proceedings, and certain liabilities that might be imposed as a result of such actions, suits or proceedings, to which they are parties by reason of being or having been a director or officer of Simtek.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act") may be permitted to directors, officers and controlling persons of Simtek pursuant to the foregoing provisions, or otherwise, Simtek has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 8. Exhibits.

| Exhibit Number ----- | Description ----- |
|----------------------------|--|
| 4.1 | Ninth Amendment to the Simtek Corporation 1994 Non-Qualified Stock Option Plan |
| 4.2 | Tenth Amendment to the Simtek Corporation 1994 Non-Qualified Stock Option Plan |

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- 4.3 Eleventh Amendment to the Simtek Corporation 1994 Non-Qualified Stock Option Plan
- 5.1 Opinion of Holme Roberts & Owen LLP
- 23.1 Consent of Hein & Associates LLP, Independent Registered Public Accounting Firm
- 23.2 Consent of Holme Roberts & Owen LLP (included in Exhibit 5.1)

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Colorado Springs, State of Colorado, on April 10, 2007.

SIMTEK CORPORATION

By: /s/ Harold Blomquist

Harold Blomquist
Chairman, Chief Executive Officer and President

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature ----- | Title ----- | Date ----- |
|---|--|---------------|
| /s/ Harold Blomquist ----- Harold Blomquist | Chairman of the Board, Chief Executive Officer and President | April 10, |
| /s/ Brian Alleman ----- Brian Alleman | Secretary, Vice President and Chief Financial Officer | April 10, |
| /s/ Kim Carothers ----- Kim Carothers | Controller (Principal Accounting Officer) | April 10, |
| /s/ Alfred Stein ----- Alfred Stein | Director | April 10, |
| /s/ Robert Keeley ----- Robert Keeley | Director | April 10, |

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/s/ Ronald Sartore

Director

April 10,

Ronald Sartore

/s/ John Hillyard

Director

April 10,

John Hillyard